

BEHEADED

Dr. John Hewytts Ghost

Pleading, Yea crying for

EXEMPLARIE JUSTICE

AGAINST

The Arbitrary, Un-exampled Injustice of his late
Judges and Executioners in the New High.

Commission, or Court of Justice, sitting in

WESTMINSTER-HALL.

Containing his Legal Plea, Demurrer, and Exceptions to their illegal Jurisdiction, Proceedings, and bloody Sentence against him; drawn up by Counsel, and left behinde him ready ingrossed; the Substance whereof he pleaded before them by word of mouth, and would have tendred them in writing in due form of Law, had he not discerned their peremptory Resolution to reject and over-rule, before they heard them read.

Gen. 3. 10. The voice of thy brothers BLOOD CRYETH UNTO ME from the ground.

Exod. 21. 14. If a man come presumptuously upon his neighbour to slay him with guile, thou shalt take him from mine Alter, that he may die.

Pl 94 20, 21, 23. Shall the throne of Iniquity have fellowship with thee, which frameth mischief by a Law? They gather themselves together against the soul of the righteous, and condemn the innocent blood: But the Lord shall bring upon them their own iniquity, and shall cut them off in their own wickednesse: yea, the Lord our God shall cut them off.

Prov. 28. 17. A man that doth violence to the blood of any Person, shall flee to the pit, Let no man stay him.

LONDON,

27 Mar 1659

Printed by T. Childe and L. Parry, and are to be sold by Edward Thom., at the Adam and Eve in Little Britain. 1660.

Dr. John Hewyts Ghost

Pleading, Yes crying for

EXEMPLAIRE JUSTICE

ACAINET

Commission of Court of Justice sitting in
Judge and Executioners in the New High
The Admiralty, the example of justice of his late

WNESTWIMYSTR-HALL

before they heard him read.

1. The first part of the book is a history of the
 2. second part is a description of the
 3. third part is a description of the
 4. fourth part is a description of the
 5. fifth part is a description of the
 6. sixth part is a description of the
 7. seventh part is a description of the
 8. eighth part is a description of the
 9. ninth part is a description of the
 10. tenth part is a description of the

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Printed by T. Collins and E. Parry, and are to be sold by H. J. Wood, at the Adonis and Hosiery Buildings, 1860.



The Plea and Demurrer of John Hewytt, Dr. of Divinity, to the Jurisdiction and Proceedings of the Commissioners in pursuance of an Act, for the security of the Lord Protectors Person, &c. and to the Sentence of Death pronounced against him by them.



His Defendant saith, That he is by Birth a Freeman of England, and that it is the undoubted antient inseparable Birthright, Privilege, and Inheritance of every English Freeman both by the Common Laws, Franchises, Great Charters, Statutes, and Usages of this Land, ratified from Age to Age by the Votes, Resolutions, Declarations, Judgements of the High Court of Parliament, and other publike Courts of Justice, the Oathes of the Kings of England and their Justices, and by manie other solemn publick Confirmations, Protestations, Oathes, Vowes, and Covenants: (a) That no Freeman of England may or ought to be taken or imprisoned, or disseised, or disinherited of his Freehold, Liberties, or Free Customs; or to be outlawed, exiled, or any way destroyed, passed upon, dealt with, or forejudged of life or limb, or put to death, upon any accusation whatsoever, but by the lawfull Judgement of his Peers, or by the Law of the Land; and that he shall not be put to answer without Presentment before the Justices, or thing of Record, or by due process of the Law, or by writ original, according to the old Law of the Land; [b] And that all trials hereafter to be had, awarded, or made for any Treason, shall be had and used **only** according to the due order & course of the Common Laws of this Realm, and not otherwise, upon Inquest and presentment by the Oaths of 12 good and lawfull men upon good and probable evidence and witness; And that

(c) 5 E. 1. c. 21. (c) if any thing be done to the contrary of the Premises, it shall be void in Law, redressed, and holden for error, and nought: And if any Statute be made to the contrary, that shall be holden for none, And moreover this Defendant saith, that in the Parliament of 2. R. 2. rot. Parl. n. 47. the Commons petitioned the King and Lords, that the Constable and Marshall of England (then encroaching upon this Priviledge of the Commons, by holding Pleas of Treason and Felony before them after the course of Martial Law) might from thenceforth surcease to hold Pleas of Treason and Felony before them, done within the Realme, and that the same may be determined only before the Kings Justices, according to the Great Charter; which was then assented to: And that upon the like petitions of the Commons in the Parliaments of 1 H. 4. and 2 H. 4. rot. Parl. n. 89. it was assented to, and enacted by the King and Lords, that the Kings liege people (d) should not be put to answer before the Constable or Marshall in Courts of Chivalry, for any thing done within the Realme, but that (as before in the times of his Progenitors) the same might be tried & determined only before his Justices in his Courts, as it ought to be according to the Common Law of the Realm, & in no other place or manner. Upon which Considerations many of the Kings loyal Lords, Gentlemen and other subjects in the general insurrection of the Villains & other Rebels against the King, in the 5th year of Richard the 2d. having inflicted divers punishments upon the said villains and traitors without due processe of the Law, and otherwise then the Lawes and usages of the Realme required; though they did it out of no malice prepened, but out of meer loyalty to the King, and to appease and cease the present mischief, and out of ignorance of the said Lawes and usage, in which if they had been learned, yet at that time they ought not to have tarried the process of the Law in those punishments of their good discretion; yet those punishments and executions of them in a summary way being contrary to, and not warranted by the Lawes and usages of the Realme, they were enforced for their future immunity against the King and his heires, and the heires,

(d) Cooks 4.
Instit. p. 124.
125.

heires, wives and friends of those they punished, to petition the King and Parliament, for a general pardon by act of Parliament, to secure and indemnifie themselves; which was granted them, in 5. R. 2. Parl. 1. ch. 5. else they might have been impeached and punished for the same, as well as King Richard the second himself; who in the Parliament of 1 H. 4. rot. Parl. n. 44 (wherein he was enforced to resigne his Crown, & then deposed for his misgovernment) was amongst other Articles impeached of this in particular by that Parliament, for that against the great Charter (ch. 29.) and his Coronation Oath, he suffered many of his Liege people to be maliciously accused, apprehended, imprisoned, and tried before the Constable and Marshall of England in their military Court, for words secretly spoken, or acts privately done, to the scandal of his Royal Person, where they were enforced to acquit themselves by duell; whence the destruction not only of the Nobles and Great Men, but likewise of all and every the persons of the Commons of the Realm might probably have ensued. And this Defendant further saith, that one Peter Burchet of the Temple in the 13th year of Queen Elizabeths Reign, having wilfully stabbed that famous Sea-Captain John Hawkins, for not being of his opinion in Religion, (Burchet being perswaded in Conscience, that it was lawfull for him to kill every one who was not of his opinion) the Queen being much incensed against him for this horrid fact, commanded him to be forthwith tried and executed for it by Martial Law: But her Judges and Councill informing her, that he could not be so tried by law, it being done not in an Army, but in time of peace, when her Courts of Law and Justice were open; thereupon she desisted from this way of Tryall; After which he was tried according to Law, for this and his murdering his keeper in the Tower, as Mr. Camden records in his *Annals of Queen Elizabeth*, p. 242. 243. And whereas in the Parliament of the 4th. of King James holden at Westminster, there was some kind of motion made; that to extirpate and reforme the inveterate evil customes, disorders, sewds, bloudsheds, thefts

and spoiles wherewith the worst sort of Inhabitants near the borders and limits of both Realmes of England and Scotland were infected and inured; that they might be tried by a summary Proceeding by way of Martiall Law, or by the Lawes of the Kingdome into which they fled to purchase their impunity: This Parliament was so farre from approving thereof, that they specially enacted, in this case (even of these worst sort of men)

* 4 Iacob. ch. 1. * That in regard of some difference and inequality in
 ' the Laws, Trials, and Proceedings in cases of life, be-
 ' tween the Justice of the Realm of England and that of
 ' the Realme of Scotland, it appearing to be most con-
 ' venient for the contentment and satisfaction of all
 ' his Majesties Subjects, to proceed with all possible se-
 ' verity against such offenders in their own country,
 ' ACCORDING TO THE LAWES OF THE
 ' SAME, WHEREUNTO THEY ARE BORNE
 ' AND INHERITABLE; and by and before the na-
 ' turall borne subjects of the same Realme; by whom
 ' their Murders, Felonies, Rapes, &c. should be in-
 ' quired of, heard and determined before his Majesties
 ' Justices of Assize, or Commissioners of Oyer and
 ' Terminer, or Goal delivery, by good and lawfull men
 ' of the 3. Counties therein specified, and none other.
 ' And that at all such Trials the Jurie then and there
 ' sworne, shall have in their power and election, accor-
 ' ding to their conscience and discretion upon their
 ' Oathes, to receive and admit only such sufficient
 ' good and lawfull witnesses upon their Oathes, either
 ' for or against the party arraigned, as shall not ap-
 ' pear to them, or the greater part of them to be un-
 ' fit and unworthy to be witnesses in that cause, either
 ' in regard of their hatred and malice, or their favour
 ' and affection either to the party prosecuting, or to the
 ' party arraigned, or of their former evil life and con-
 ' versation. Which common, equal, indifferent Justice
 ' allowed to the worst Malefactors, as their birthright
 ' and inheritance by this Parliament and Act, this De-
 ' fendant

fendant now onely craves, and hopes you cannot in
 Law or Justice deny him; nor proceed againſt him by
 way of Martiall Law. And ſo much the rather, becauſe
 ſince this Statute, King Charles in the 3d. year of his
 Reign, by the advice of his Counſell (to ſuppreſſe the
 Inſolencies of Souldiers and Mariners then billeted in
 ſundry parts of the Realm) having iſſued out Commiſſi-
 ons to ſundry perſons of quality, in time of peace, to
 execute Martiall Law upon thoſe Soldiers and Mariners, and
 other diſſolute perſons (only) joyning with them, for Murther,
 Robbery, Felony, Mutiny, and other outrages committed by
 them, by ſuch ſummary courſe and order as is agreeable to
 Martiall Law, and as is uſed in Armies in time of Warre; to
 proceed to the triall and condemnation of ſuch offenders, and
 then to cauſe them to be executed and put to death, according
 to the Law Martiall; By pretext whereof ſome of the ſaid
 ſouldiers and ſubjects were put to death by ſome of the ſaid
 Commiſſioners, when and where, if by the Lawes and Statutes
 of the Land they had deſerved death, by the ſame Lawes and
 Statutes alſo they might, and by **no other** ought to have been
 Judged, (before the Kings Juſtices) and executed. Upon
 Complaint of theſe Commiſſions, as illegal, in the Par-
 liament of 3. Caroli, they were, after a full debate by
 both Houſes, voted to be againſt Law; And in the Petiti-
 on of Right it ſelf, it was then prayed by the Lords and
 Commons, aſſented to by the late beheaded King
 himſelf, and enacted by this Law, That hereafter no Com-
 miſſions of like Nature may iſſue forth to any perſon or per-
 ſons whatſoever, to be executed as aforeſaid, leſt by colour of
 them any of his Maſtieſties Subjects be deſtroyed or put to death;
contrarie to the Lawes and Franchiſe of the Land:
 which the Lords and Commons then prayed, and the King gran-
 ted, confirmed by Act of Parliament, as their Right and
 Liberty according to the Lawes: which Act ſtands
 yet in its full force. Upon conſideration of which late
 Excellent Law, the laſt long Parliament, in the caſes of
 the Lord Connor Magwire and Mac-mobun, and the Court
 of Kings Bench wherein they were tried by their ſpecial
 order,

order, in Michaelmas and Hilary Terms 20 Caroli, were so just, punctual and honorable, in confining themselves to the rules of Law and Justice; that though these were principal Conspirators, and Actors in the late most horrid, barbarous, bloody Treason, Rebellion and Massacre in Ireland, and taken in its prosecution; yet they were so far from trying them by Marshal Law in a Council of Warre, or, High Court of Justice, even in a time of open warre both in England and Ireland, than they assigned the said Maguire Counsil, to argue against the very Jurisdiction of the Kings Bench it self; whether he, being a Peer of Ireland, could in point of Law or justice by the Statute of 35 H.8. ch.2. or any other Act, be outed of his Trial by his Peers, and tried by a Jury of good and lawfull men of the County of Middlesex, for a Treason committed in Ireland; being sent a Prisoner from thence against his will? Which was there *publickly argued at the Bar by Counsel pro & contra; and then by the Judges, and overruled at last against him, before he was put to plead guilty or not guilty to his Indictment: after which they both were admitted to take both their peremptory and legal challenges to the Juries returned; (* according to Law, admitting such challenges even in Cases of high Treason;) and all just Exceptions to the Witnesses produced; and had a most fair and free triall; being found guilty by the Jury, before any Judgment passed against them. Which Justice he humbly craves in his Case, of less hainousness and importance than theirs, being a native English free-man, and they onely Irish Rebels; because this his inherent Birthright and Liberty can neither be forfeited by him for any real or pretended Treason nor offence whatsoever, nor yet be denied or deferred to him (after all the premised Laws, Statutes, Charters, Judgments, Resolutions, Presidents) without the highest injustice; And he further saith, that to proceed against, trie, condemn, execute him in this high Court without a legal Indictment, Presentment, and Trial by the Oaths of twelve good and lawfull men according to the due order and

* See Mr.
Prynnes Ar-
gument
thereof.

* 32 H.6.f.26.
14 H.7.f. 19.
Brook Chal-
lenge, 86, 211,
217. Stam-
fords Pleas
l.3. c.7 Cooks
3 Instit. p.27.

c 1 E 6. c. 12.
1 & 2 Phil. &
Mar. c. 10, 11.
Cooks 3 In-
stit. c. 1, 2

and course of the Common Laws of this Realm (and that in *Westminster Hall* it self, the place of Law & publick Justice, in time of Peace, when and where all other Courts of Justice are open) or in any other form by way of *Martial Law*, or otherwise than a just Jurie of his Equals, is not only illegal, erroneous, & against all Rules of Justice (the Commissioners themselves being both his grand and pettie Jurie, and his Judges likewise; if not parties interess'd, to whom he can take no peremptory nor legal challenges, which the ^f Law allows him if tried by a Jury, in cases of high Treason at this day;) but also wilfull and malicious Murder by the Laws of England, being against ^f Cook's 3 Instit. f. 27. Brook Challenge 217. *Magna Charta*, c. 29. and done by such power and strength as he this Defendant cannot defend himself against, as is resolved in *Sir Edward Cook's 3 Instit. p. 52. & 224.* (printed by special Order of the House of Commons, dated 12 May, 1641.) and long before in *Andrew Horn* his *Mirroure of Justices*, c. 5, p. 296, 297. who records, that our noble King *Alfred*, caused no less than 44. of his Justices to be hanged in one year as *Murderers*, for condemning and executing some of his people without a legal Indictment and Trial by a sworn Jury; and others of them for offences not capital by the known Laws of the Land, and without clear and pregnant Evidence. And this Defendant likewise saith, that the Commons themselves sitting at *Westminster*, after the late Kings Execution, in their printed Declaration of 17 Martii, 1648. (expressing the grounds of their proceedings against the said King, and for settling the present Government in way of a Free State, to which many in present power and sitting here were assenting and gave their Votes) did thereby faithfully promise and engage to the whole English Nation; That the good old Laws and Customes of England, **The Badges of our Freedom**, (the benefit whereof our Ancestors enjoyed long before the Conquest, and spent much of their blood to have confirmed by the great Charters of their Liberties) which have continued in all former Changes, and being duly executed are the most just, free, and equal of any other Laws in the world; shall be duly continued and maintained; the Liberty,

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Property and peace of the Subject being so fully preserved by them; adding, that 'if these Laws should be taken away, all industrie must cease, all miserie, bloud and confusion would follow; and greater calamities, if possible, than fell upon us by the late Kings misgovernment would certainly involve all persons, under which they must inevitably perish. And moreover, the General Council of the Officers and Army themselves (whereunto most Officers and Souldiers in present power and some Commissioners here sitting were parties) in the Declaration of their Engagements, Remonstrances, Representations, Proposals, Desires, and Resolutions for settling the Parliament in their just Privileges, and the Subjects in their Liberties and Freedoms (printed by their own Orders and reprinted all together by Order of the Lords in Parliament, 27 September 1647) pag. 11, 36, 37, 38, 39. (especially in their Declaration and Representation tendered to the Parliament concerning the just and fundamental Rights and Liberties of the Kingdom, 14 May 1647) do profess and declare. 'That they were not a meer mercinarie Armie, hired to serve any arbitrarie power of State, 'but called forth and conjured by severall Declarations 'of Parliament, to the defence of their own and the 'peoples just Rights and Liberties, and that they took 'up Arms in Judgment and Conscience to those Ends, 'and have so continued them, and are resolved, according to the Parliaments just desires in their Declarations, and such principles as they have received from their frequent informations, and their own common sense concerning those fundamental Rights and Liberties, to assert and vindicate the same against all arbitrarie power, violence and oppression, and against all particular parties and interests whatsoever; that 'so all the free-born people of this Nation may sit 'down in quiet under the glorious administration of 'justice and righteousness, and in full possession of 'those fundamental Rights and Liberties; without
 ' which

‘ which we can have little hopes (as to humane confi-
 ‘ derations) to enjoy any comfort of life, or so much
 ‘ as life it self, but at the pleasure of some men Ruling
 ‘ according to will and power. That they desire the
 ‘ establishment of such good Laws, as may duly and
 ‘ readily render to every man their just Rights and
 ‘ Liberties. And more particularly, in their Proposals
 ‘ to the Commissioners of Parliament in order to the
 ‘ clearing and securing of the Rights and Liberties of
 ‘ the Kingdom, *August 1. 1647. Sect. 10. p. 114.* they
 ‘ proposed, That the Rights and Liberties of the
 ‘ Commons of England, May be cleared and vindic-
 ‘ cated from any other Judgment, Sentence, or Pro-
 ‘ ceeding against them other than by their Equals, or
 ‘ according to the Law of the Land. And this De-
 ‘ fendant finally saith, that by the Instrument of Govern-
 ‘ ment it self 16 December 1653. *Artic. 6.* and the Oath
 ‘ therein prescribed to, and accordingly taken by his
 ‘ Highness, Oliver Cromwell Lord Protector, he is limited
 ‘ and sworn; ‘ not to alter, suspend, abrogate or repeal
 ‘ the Laws, and to govern these Nations according to
 ‘ the Laws, Statutes and Customes; causing Justice and
 ‘ Law to be equally administred: whereunto he is like-
 ‘ wise obliged and sworn again, by his Oath prescribed
 ‘ in the late printed humble Petition and Advice. Neither
 ‘ doth that pretended Act, by which you here sit as Com-
 ‘ missioners to trie this Defendant (made by no legiti-
 ‘ mate, nor free Parliament of England, and that when near
 ‘ one hundred and fiftie Members thereof were causeless
 ‘ and forcibly secluded) authorize you (as he humbly con-
 ‘ ceiveth) to proceed against him for any Crime therein
 ‘ specified, to Conviction or final Sentence, but onely as in
 ‘ Cases of high Treason, and misprision of Treason, and ac-
 ‘ cording to Justice; and that you cannot do but onely
 ‘ by proceeding against him by a lawfull Indictment and
 ‘ Trial by a Grand and Pettie Jurie, according to the
 ‘ great Charter, Laws, and Statutes of the Land, and
 ‘ the late Petition of Right, which this new Act cannot
 ‘ repeal

repeal or null. All which this Defendant is readie to
 averr, justifie, and make good, when and where this *high*
Commission Court, or his Highness the *Lord Protector* shall
 appoint: which being a meer matter of Law, wherein
 both the liberties and lives of all the Free born people
 of *England* are so universally, highly, and equally con-
 cerned, as well as the libertie and life of this Defendant,
 proper only to be debated before, and resolved by
 the *Judges of the Law*, or the *high Court of Parliament*;
 This Defendant thereupon humbly praieth, That it
 may be referred to, openly argued by his learned Counsel, before
 all the *Judges*, or a *Parliament*, & by them determined: and
 in the mean time humbly demandeth the Judgement of
 this *High Commission*; Whether they may, can, or ought
 in point of Law and Justice, to proceed against, con-
 demn, or execute this Defendant, upon anie illegal ac-
 cusation or *Impeachment* whatsoever, here exhibited or
 read against him, without a legal Indictment, Present-
 ment and Trial by a Jurie of his Equals? Or can take
 anie further connuance of the Charge against him, for
 the premised Authorities & Reasons; which he in all
 humilitie referreth to, and imploereth you to take into
 your saddest considerations, and that in the Name and
 dreadfull presence of the Omniscent, Omnipotent,
 (g) *Gen. 18. 25* Sovereign (g) Judge of all the Earth, (h) before whose glo-
 (h) *2 Cor. 25.* rious Tribunal you must all ere long appear, (stript of all
 20, Earthlie Honors, Pomp, Guards, and Power,) to give
 a strict account of all your Actions, whether good or evil, and
 of your proceedings in this verie Cause; when this his
Plea and Demurrer will rise up in judgement against,
 and condemn you, in case you willfully prejudge, mis-
 judge, or reject it now, without due and full examinati-
 on according to Law, Justice, Conscience: And if the
 Consideration of this terrible day of account and just
 retribution before Christs own Tribunal, shall not
 prevail with you to admit of this his *Legal Plea and*
Demurrer, (as being after your deaths, perhaps manie
 years yet to come, and no waies endangering the losse
 of

of your Lives, Lands, Honors or Estates in this present world,) He shall then humbly intreat you for your own future indemnitie (he hopes, without offence) seriously to consider; That in the Parliament of 11 R. 2. c. 1. 5. 21 R. 2. c. 11, 12. Tresilian chief Justice of the Kings Bench, Belknappe Chief Justice of the Common Pleas, John Care, Iohn Holt, Roger Fulborpe, William de Burgh Judges, and Iohn Locton the Kings Serjeant, were all impeached of high Treason, condemned, and some of them executed as Traytors and Enemies to the King & Realm, the rest perpetually banished, their Lands and Estates confiscated to the King, and all access of their wives, children or others to them during their exile, prohibited by Judgement & Act of Parliament, only for delivering their opinions (through menaces and fear of death at Nottingham Castle) under their hands and Seals, against the Law of the Land; That the Lords and Commons who procured the Commission in the Parliament of 10 R. 2. for the better Government of the Realm, and moved the King to consent thereto, deserved to be punished as Traytors, by capital pain of death: That so by colour of these their opinions, Robert de Veer Duke of Ireland, Nicholas Brambre, Knight, and others of the Kings ill Counsellors, might take occasion to destroy and take away the lives of the Lords who procured and executed that Commission, and others of the Kings people, by undue and illegal Indictments and proceedings, without any lawfull Trial by their Peers, as Traitors to the King. And the said Sir (i) Nicholas Brambre for enforcing the Judges, with others of the Kings ill Counsellors, to deliver their opinions against Law, and for his beheading, executing 22 Prisoners of Newgate, (impeached and indicted of felony, or suspicion of felony) at Foul-Hoke in Kent by regal and tyrannical power incroached by him, without warrant, or due processe of the Law, against the Great Charter and Usage of the Realm of Engl. was in the same Parl. condemned for high Treason, & beheaded at Tower-hill on the same block, with the same Axe he had prepared to cut off the heads of others he intended there to execute as his Enemies. And that in the last Parliament

(i) Henry de Knyghton de Event. Angliæ l. 5. p. 2718, 2726, 2727, 2728.

(k) Their Impeachments are entred in the Journals of the Lords and Commons House.

* See Canterburie & Straffords printed Trials.

of King Charles, the (k) two chief Justices, Brampton, and Finch, the chief Baron Davenport, and all the rest of the Judges and Barons, except two, were by the whole House of Commons, and some of the Commissioners here sitting, and Counsel pleading against this Defendant, impeached of high Treason, dis-fudged, and put to fines and ransoms, for that they had trayterously endeavoured to subvert the fundamental Laws and Government of the Realm of England, and instead thereof to introduce an arbitrary and tyrannical Government against Law; which they had declared by trayterous words, opinions and judgements in the case of Ship-money, against Mr. John Hampden; Which judgement and opinions concerned only the propertie of the Subjects goods, not the hazard of their lives, inheritances and forfeiture of their estates, as your present proceedings doe, being of a more high and dangerous consequence; In which Parliament, by the like Impeachment and prosecution; * William Laud Archbishop of Canterburie, and Thomas Earl of Strafford Lord Deputie of Ireland, were condemned and executed by Judgement of Parliament, and some here present, as 'Traitors, guiltie of High Treason, for 'that they endeavoured traiterously to subvert the 'Fundamental laws, and established government of 'this Realm, and in stead thereof to bring in and 'set up an arbitrarie and tyrannical power, against Law. 'To prove which Charge, their arbitrarie proceedings contrarie to the Laws and great Charters of 'England, both at the Counsil Table, in the High 'Commission, Star Chamber, and elsewhere were given in Evidence against them; and more particularly, the Earl of Strafford's proceeding against the Lord 'Mount-Norris in Ireland, by a Council of War in time 'of Peace, and condemning him to death therein 'without any legal indictment and Trial by his Peers, 'against the great Charter & Laws of the Land, though 'he did not execute him thereupon: And whether your present proceedings of like nature against this De-

Defendant, in case you reject or over-rule this his *Plea* and *Demurrer*, and condemn and execute him by pretext of an *illegal Act* (made by no free and lawfull Parliament of *England*,) for offences not treasonable by the known *Laws* and *Statutes* of the *Land*, nor legally proved against him by any one *Witness* produced in Court before his face, without consulting the present *Judges* of the *Land* (who refuse to join or sit with you in this new illegal way of *Trial*) will not much more involve you in the *Crime* and *guilt* of the verie self same *high Treasons*, for which they were thus anciently and lately impeached, condemned, executed by *Judgment* of *Parliament*, and so expose you to the like *capital censures*, *forfeitures*, *confiscations* of your real and personal *Estates*, as they underwent, in future *Parliaments*, by your endeavoring to subvert all the premised fundamental *Laws* and established legal proceedings in the *Land*, and to introduce and set up a meer arbitrarie and tyrannical power contrarie to *Law*, to the endangering not onely of the properties, but lives, liberties, and Inheritances of all the *Noblemen*, *Gentlemen*, *Clergie-men*, and other *Freemen* of *England* by such exorbitant, martial proceedings, after all these *Statutes*, *Judgments*, with the late *Remonstrances*, *Declarations*, *Leagues*, *Covenants*, and solemn *Oaths* of the *Lord Protector* himself and others against them, yea after the many years *Wars* and heaue *Taxes* imposed on the *Nation* for the maintaining and inviolable preservation of these fundamental *Laws*, *Liberties*, and *Rights* against all arbitrarie *Commissions* and proceedings whatsoever; he humbly submits to your own impartial *Resolutions* and consciences. And thereupon this Defendant praies his *Dismission* from any such further proceedings against him without a lawful *Jury* and *Trial* by his *Peers*. And that you will be pleased after deliberate consideration of the premises to reverse and recall that arbitrary, unrighteous, bloudy *Sentence* of *Death*, you have newly passed against him, without any

anie lawfull Indictment, Presentment, Trial, Confession or Conviction of Treason, which strikes at the Root of the Fundamental Laws, liberties, franchises of all English Free-men, and cuts off all their necks at one stroke, transcending all the arbitrarie, tyrannical proceedings of *Strafford*, *Canterbury*, and the late *King Charles* (whom some of your selves have impeached, censured, condemned, decapitated as the *very worst*, and *greatest of Tyrants*) lest it become a most pernicious fatal president to posteritie, to others, or your own destruction, and render you as execrable to all succeeding generations, as anie formerly guiltie of the like exorbitant proceedings.



Just and Legal Exceptions to the Cause and Manner of the Illegal Judgement given against Dr John Hewytt; humbly tendered by him to the consideration of those Commissioners who denounced it.

That it is specially enacted by the Statute of *Westminster* the 1. ch. 1. and accordingly resolved in *Brook Pain* 1, 2, 4, 5, 8, 9, 12, 13, 14, 15, 19, and the *Year-Books* therein abridged, by *Stamfords Pleas of the Crown*, l. 2. c. 60. *Dyer*, f. 205. a. 300. b. *Cooks* 2. *Institutes*, p. 177, 178, 179. and 3. *Institutes*, p. 217. That no man ought by Law to be condemned, or put to death in case of Treason or Felony, for standing mute, or refusing to plead, or put himself upon his Trial, or for challenging more than

than 36. of the Jurie peremptorily; but only in these cases.

1. When and where the person accused and arraigned, is a ^a Notorious Traytor or Felon, and openly of evil name, and defamed thereof: But Dr. Hewytt is no such person ^{a West. 1. c. 12. Stamford, 1. 2. c. 60. f. 149.}

2. When and where the Treason or Felony for which he stands accused, is (b) notorious, evident, certain, or at least very probable, and already found upon Oath against him by the Presentment, or Indictment of an honest lawfull Grand Jury of his Equals, of the same County wherein he is arraigned, or confessed by himself: All which Circumstances and Evidences of Guilt were wanting in Doctor Hewytts case. ^{b Cooks 2 In. stit. p. 177. 179 b Cooks 2 In. stit. p. 177. Stamford, f. 150. a.}

3. When and where the Judges, c for the better satisfaction of their consciences, and discharge of their duties, doe (as they ought by Law,) first openly examine the Evidence and Witnesses, which prove the person arraigned guilty of the Fact of Treason or Felonie for which he stands indicted, before they proceed to give Iudgement against him for not pleading, or standing mute. Which was not done in this case, there being neither Witnesses nor Evidence produced in open Court to prove him guiltye. ^{c Stamford, 1. 2. c. 60. f. 150}

4. When and where there is a legal Indictment found against the partie arraigned, which being read openly to him in Court, the Traytor or Felon thereupon, doth either wilfully or maliciously stand mute, refusing to answer or plead thereunto, (which the Jury there impannelled to trie him, are by Law to enquire of, finde and return upon Oath:) Or, peremptorily challengeib above 35 of his Jury without any legal cause or exceptions; Or else obstinately refuseib to put himself upon a Legal Tryal by God and his Country, (being a Jury of honest, lawfull men of the County then and there present, returned by the Sberiff alone, not Iustices or others, for to try him; to whom by Law he may take both his legal and peremptory Challenges) saying, That he will be tried, only by God and the Bench or, by God and the Court, or Judge; or by God and the Virgin Mary, or Holy Church: there being

no president extant in Records, or Law-books, of any Traytor or Felon hitherto condemned to die, for standing mute, or not pleading, onely for refusing to be tried by God and the honourable Bench, Judges, Court Alone, without any Indictment or Jurie; and for earnestly importuning the Court and his Judges, that he may be tried onely by God and his Countrey, and on an Indictment by a Jury of his Equals according to Law, casting himself wholly upon such a Trial, after a lawfull Presentment and Indictment first found against him by a Jury. The onely reason rendered in and by the forecited Statute and Law-books of all Judgments hitherto given against any Traitor or Felon, for standing mute, and refusing to plead, being this, 'h Because he peremptorily refuseth to stand to and be ' tried by the Law of the Land, and a due and lawfull ' Trial by a Jury of his Equals, according to the course of the Common Law, and the great Charter. But Dr. John Hewytt is now condemned to be executed as a Traitor by the High Court of Justice, contrarie to all former Presidents, Statutes, Law-books, ' and the onely legal reason in former times of all ' Judgments rendered against any persons in such cases; even for his frequent, earnest, importunate demanding and peremptorie casting of himself, upon a due legal ' Trial by God and his Countrey, and an indifferent ' Jurie of his Equals, according to the common, Statute Laws and great Charter of England, after a legal ' Presentment and Indictment to be first found against ' him: and for refusing to waive this his legal Trial (to the publick prejudice of all other English Freemen) and cast ' himself whollie and solie upon a new ' kind of arbitrarie Trial, contrarie to Law, By God and the Bench, Court, and the Commissioners themselves, (who would be both his Grand and Petty Jury as well as Judges) ' without and before any legal ' Presentment, Indictment, or Jurie impannelled or return'd to trie him. Therefore he humbly conceives this

1 W. 1. c. 12.

3. Instit. p. 217.

2. Instit. p. 179

8 E. 3. Itin.

Nort Fitz.

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14 H. 4. 7.

Brook. Pain.

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this Judgment dencounced against him upon this reason & ground alone, to be most erroneous, illegal, unjust, repugnant to all former Presidents, & to one this verie Week at the *Sessions* in the *Old Baily* by Judgment of some of his Judges at *Westminster* and of very dangerous consequence. Whereupon he humbly praies the *suspension & reversal* thereof as unjust, and meerlie void in Law, by the Statutes of 25 E. 1. cap. 2. & 42 E. 3. c. 1. lest the Execution of him for a Traitor upon this Judgment and ground, should prove wilfull Murder, and a shedding of innocent blood in the account both of God and man.

What therefore the Prophet *Jeremiah* alleged to the Princes of *Judah*, in a like case, when they resolved him at first to be worthy of death, without a legal hearing or trial, *Jerem 26: 11, 14, 15.* As for me, behold, I am in your hands, to do unto me what seemeth good and meet unto you; But know ye for certain, that if ye put me to death, ye shall surely bring innocent blood upon your selves, and upon this City, and upon the Inhabitants thereof: Whereupon the Princes and People, upon second and better advised thoughts altered their former bloudie Sentence, saying; This man is not worthy to die; for he hath spoken unto us in the Name of the Lord our God. And the hand of *Ahikam* was with *Jeremiah*, that they should not give him into the hand of the People to put him to death. Shall be my Allegation to those who have passed this unjust Sentence of Death against me; and if it produce not the like effect for their reversal thereof, and my preservation from its violent bloudie Execution, as it did in this Prophets case; I shall then earnestly pray to God, that it may not draw down from Heaven that heavie Sentence of wrath upon them, nor that sad Judgment upon the whole Land of *England* which this Prophet dencounced against *Jehsjakim*, *Jer. 20. 17, 18, 19.* But thine eyes and thine heart are but for thy covetousness, and for to shed Innocent Blood, and for oppression and violence to do it. Therefore thus saith the Lord

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concerning Jehojakim; They shall not lament for him, saying, Army brother, or ah sister, ah Lord or ah his glory: But he shall be buried with the burial of an Ass, drawn and cast forth beyond the gates of Jerusalem: And that which the Prophet Joel threatened to Egypt and Edom, Joel 3. 19. Egypt shall be a desolation, and Edom a desolate Wilderness, for their violence against the children of Judah, because they have shed Innocent Blood in the Land. And that against all Rules of Law and Justice, in that they intitle, The High Court of Justice, which will not palliate, but aggravate the Injustice acted in it, and make it more detestable both to Man and God himself, who avers this for an undoubted truth;

i Eccles. 3. 16,
17. Psal. 94.
20, 21, 23.

Gen. 9. 5, 6. Surely your blood of your lives, will I require; at the hand of everie Beast will I require it, and at the hand of everie mans brother will I require the life of man. Who so sheddeth Mans Blood, by Man shall his Blood be shed; for in the Image of God made he Man.

FINIS.